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ROBERTO BENABE

**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

ROBERTO BENABE,

Plaintiff,

v.

EQUIFAX INFORMATION
 SERVICES, LLC; PHH MORTGAGE
 CORPORATION; LEXISNEXIS RISK
 SOLUTIONS, INC,

Defendants.

:
 : Civil Action No.:
 :
 :
 : **COMPLAINT FOR DAMAGES**
 : **PURSUANT TO THE FAIR**
 : **CREDIT REPORTING ACT, 15**
 : **U.S.C. § 1681, ET SEQ.**
 :
 : **JURY TRIAL DEMANDED**
 :
 :

INTRODUCTION

1. The United States Congress has found the banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence, which is essential to the continued functioning of the banking system. Congress enacted the Fair Credit

1 Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”), to ensure fair and accurate
2 reporting, promote efficiency in the banking system, and protect consumer
3 privacy. The FCRA seeks to ensure consumer reporting agencies exercise
4 their grave responsibilities with fairness, impartiality, and a respect for the
5 consumer’s right to privacy because consumer reporting agencies have
6 assumed such a vital role in assembling and evaluating consumer credit and
7 other information on consumers. The FCRA also imposes duties on the
8 sources that provide credit information to credit reporting agencies, called
9 “furnishers.”
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13 2. Through a tightly wound set of procedural protections, the FCRA protects
14 consumers from the material risk of harms that otherwise flow from inaccurate
15 reporting. Thus, through the FCRA, Congress struck a balance between the
16 credit industry’s desire to base credit decisions on accurate information, and
17 consumers’ substantive right to protection from damage to reputation, shame,
18 mortification, and the emotional distress that naturally follows from
19 inaccurate reporting of a consumer’s fidelity to his or her financial
20 obligations.
21
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23 3. ROBERTO BENABE (“Plaintiff”), by Plaintiff’s attorneys, brings this action
24 against PHH MORTGAGE CORPORATON (“PHH”), EQUIFAX
25 INFORMATION SERVICES, LLC (“Equifax”), LEXISNEXIS RISK
26
27

1 SOLUTIONS, INC (“Lexis”) (or jointly as “Defendants”) for violations of
2 the FCRA, as set forth below.

- 3
4 4. Lexis and Equifax may jointly be referred to herein as the Credit Reporting
5 Agency or “CRA Defendants”

6
7 **JURISDICTION AND VENUE**

- 8 5. This Court has federal question jurisdiction because this case arises out of
9 violations of the FCRA. 15 U.S.C. § 1681 *et seq.*; 28 U.S.C. § 1331; *Smith v.*
10 *Community Lending, Inc.*, 773 F.Supp.2d 941, 946 (D. Nev. 2011).

- 11 6. Venue is proper in the United States District Court for the District of Nevada
12 pursuant to 28 U.S.C. § 1391(b) because Plaintiff is a resident of Clark
13 County, Nevada and because Defendants are subject to personal jurisdiction
14 in Clark County, Nevada; conduct business in Clark County, Nevada; the
15 events giving rise to this action occurred in Clark County, Nevada; and
16 Defendants are registered with the Nevada Secretary of State and have
17 appointed registered agents in Nevada.

18
19
20 **PARTIES**

- 21 7. Plaintiff is a natural person residing in the County of Clark, State of Nevada. In
22 addition, Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §
23 1681a(c).
24
25 8. PHH is a corporation doing business in the State of Nevada.
26
27

1 9. PHH is a furnisher of information as contemplated by 15 U.S.C. § 1681s-2(b)
2 that regularly and in the ordinary course of business furnishes information to
3 a consumer credit reporting agency.
4

5 10. Equifax regularly assembles and/or evaluates consumer credit information for
6 the purpose of furnishing consumer credit reports to third parties, and uses
7 interstate commerce to prepare and/or furnish the reports. Equifax is a
8 “consumer reporting agency” as that term is defined by 15 U.S.C. § 1681a(f),
9 doing business with its principal place of business in Georgia.
10

11 11. Lexis regularly assembles and/or evaluates consumer credit information for
12 the purpose of furnishing consumer reports to third parties, and uses interstate
13 commerce to prepare and/or furnish the reports. Lexis is a “consumer
14 reporting agency” as that term is defined by 15 U.S.C. § 1681a(f), doing
15 business in Nevada.
16

17 12. Unless otherwise indicated, the use of Defendants’ names in this Complaint
18 includes all agents, employees, officers, members, directors, heirs, successors,
19 assigns, principals, trustees, sureties, subrogees, representatives, and insurers
20 of Defendants.
21

22
23 **Equifax Failed to Respond to Plaintiff’s Written Dispute**
24

25 13. In an Equifax credit report dated September 24, 2019, Equifax reported
26 inaccurate information regarding Plaintiff.
27

1 14. On or about November 4, 2019, pursuant to 15 U.S.C. § 1681i(a)(2), Plaintiff
2 disputed Equifax's reported information regarding misreported trade lines by
3 notifying Equifax, in writing, of the incorrect and inaccurate credit
4 information furnished by Equifax.
5

6 15. Specifically, Plaintiff mailed a written dispute, certified, return receipt, to
7 Equifax ("Equifax Dispute Letter"), requesting disputed inaccurate and
8 incorrect derogatory information be removed, corrected, or deleted.
9

10 16. Equifax was required to conduct an investigation into the disputed accounts
11 pursuant to 15 U.S.C. § 1681i.
12

13 17. Equifax thereafter failed to comply with its obligation to provide Plaintiff
14 with the results of any "reinvestigation" completed relating to the Equifax
15 Dispute Letter pursuant to 15 U.S.C. § 1681i(a)(6). Instead, Equifax claimed
16 to be unable to identify the disputed accounts, despite the Equifax Dispute
17 Letter specifically identifying the nature of the disputes.
18

19 18. As a result of Equifax's failure to provide a consumer disclosure, Equifax
20 negligently failed in its duties as required by and in violation of 15 U.S.C. §
21 1681i(a)(6).
22

23 19. Further, Equifax willfully failed in its duties as required by and in violation
24 of 15 U.S.C. § 1681i(a) when Equifax failed to provide written notice to
25 Plaintiff of the results of a reinvestigation not later than 5 business days after
26
27

1 the completion of the reinvestigation (assuming an investigation was
2 completed), by mail or, if authorized by the consumer for that purpose, by
3 other means available to the agency. Indeed, Equifax failed to properly
4 conduct any investigation into the disputes raised in the Equifax Dispute
5 Letter, thereby shirking Equifax's duties under the FCRA.
6

7
8 20. As a result Plaintiff suffered damages as further set forth herein, but not
9 limited to emotional distress, lost time, loss of enjoyment of life, and
10 otherwise an inability to assess his true credit standing.
11

12 **PHH Misreported Credit Information**

13 **RE: Account No. 4289**

14 21. In an Experian credit report dated September 20, 2019, PHH reported
15 derogatory information regarding Plaintiff's mortgage account.
16

17 22. However, Plaintiff filed for Chapter 13 Bankruptcy on October 28, 2009 in
18 the United States Bankruptcy Court for the District of Nevada pursuant to 11
19 U.S.C. § 1301 *et seq.*
20

21 23. Plaintiff's case was assigned Case Number 09-30364-abl ("Bankruptcy").

22 24. Filing the Bankruptcy triggered the seven year obsolescence period of 15
23 U.S.C. § 1681c. It was therefore impermissible to report any derogatory
24 information regarding any of Plaintiff's pre bankruptcy accounts later than
25 October 28, 2016 (seven years after October 28, 2009).
26
27

1 25. Prior to PHH obtaining servicing rights, Plaintiff's mortgage account had
2 (correctly) not been reported in Plaintiff's credit reports, given the
3 obsolescence period had run. However, upon obtaining servicing rights, PHH
4 began reporting Plaintiff's mortgage, despite the account becoming obsolete.
5

6 26. On or about November 4, 2019, pursuant to 15 U.S.C. § 1681i(a)(2), Plaintiff
7 disputed PHH's reported information regarding its reported obligation by
8 notifying Experian, in writing, of the incorrect and inaccurate credit
9 information furnished by PHH.
10

11 27. Specifically, Plaintiff sent a letter, certified, return receipt, to Experian
12 ("Experian Dispute Letter"), requesting the above inaccurate and incorrect
13 derogatory information be removed, corrected, or deleted. In pertinent part,
14 the Experian Dispute Letter read as follows:
15
16

17 My credit report shows you are inaccurately reporting an account for PHH Mortgages Services,
18 Partial Account No. [REDACTED] 4289. First, there are scheduled late payments in September 2019.
19 However, this account was in derogatory status prior to 2010, so its obsolete and should only
20 have been reported on my file for seven years from the date I first became delinquent which was
21 prior to 2010. This account was previously serviced by Ocwen and before that American Home
22 Mortgage. So, it spears PHH is impermissibly reaging this account and causing it to appear on
23 my report when it should have ceased reporting years ago; no later than 2017. This is also
24 causing my credit score to fall and I am losing an opportunity to potentially buy real estate, so
25 this needs to be deleted immediately.
26

27 28. Upon information and belief, upon receiving the Experian Dispute Letter,
28
29 Experian timely notified PHH of the dispute based on its mandated statutory
30 duty pursuant to 15 U.S.C. § 1681i.
31

1 29. PHH was required to conduct an investigation into this specific account on
2 Plaintiff's consumer report pursuant to 15 U.S.C. § 1681i and s-2(b).

3
4 30. On or about November 22, 2019, Plaintiff received notification from
5 Experian through its "reinvestigation" (Experian Report No. 1176-6902-15)
6 that PHH and Experian received notice of Plaintiff's dispute pursuant to 15
7 U.S.C. § 1681i(a)(6), and verified the account as "Updated". However, PHH
8 continued to report derogatory information after the obsolescence period.
9

10 31. A reasonable investigation by PHH would have removed the tradeline from
11 Plaintiff's credit report as obsolete, and thus it should have "aged off"
12 Plaintiff's credit reports.
13

14 32. PHH failed to conduct a reasonable investigation as required by 15 U.S.C. §§
15 1681s-2(b)(1)(A) and 1681i(a), and wrongly verified inaccurate information
16 in connection with Plaintiff's credit reports.
17

18 **Lexis Misreported Plaintiff's Personal Information**

19 33. In a Lexis credit report dated October 1, 2019, Lexis inaccurately reported
20 Plaintiff's personal information.
21

22 34. On or about November 4, 2019, Plaintiff disputed Lexis's inaccurate
23 reporting by notifying Lexis in writing.
24
25
26
27

1 35. Specifically, Plaintiff sent a letter, certified, return receipt, to Lexis (“Lexis
2 Dispute Letter”), requesting the inaccurate and incorrect information be
3 removed, corrected, or deleted.
4

5 36. Lexis was required to conduct an investigation into this information on
6 Plaintiff’s consumer report pursuant to 15 U.S.C. § 1681i.
7

8 37. On or about December 5, 2019, Plaintiff received notification from Lexis
9 through its “reinvestigation” (Lexis Report No. 136489505) that Lexis
10 received notice of Plaintiff’s dispute pursuant to 15 U.S.C. § 1681i(a)(6).
11 However, Lexis continued reporting inaccurate personal information relating
12 to Plaintiff.
13

14 38. A reasonable investigation by Lexis would have updated Plaintiff’s personal
15 information as requested in the Lexis Dispute Letter.
16

17 39. Lexis failed to conduct a reasonable investigation as required by 15 U.S.C. §
18 1681i(a), and wrongly verified inaccurate information in connection with
19 Plaintiff’s credit reports causing Plaintiff damages.
20

21 **FIRST CAUSE OF ACTION**
22 **VIOLATION OF THE FAIR CREDIT REPORTING ACT**
23 **15 U.S.C. § 1681 *ET SEQ.* (FCRA)**

24 40. Plaintiff incorporates by reference all of the above paragraphs of this
25 Complaint as though fully stated herein.
26
27

1 41. Equifax and Lexis violated their duties to follow reasonable procedures to
2 assure maximum possible accuracy under 15 U.S.C. § 1681e(b) when
3 preparing a consumer report.
4

5 42. Defendants failed to conduct reasonable investigations as required by 15
6 U.S.C. §§ 1681s-2(b)(1)(A) (as to PHH) and/or 1681i(a) (as to Equifax and
7 Lexis), and wrongly verified inaccurate information in connection with
8 Plaintiff's credit reports.
9

10 43. Defendants failed to review all relevant information provided by Plaintiff in
11 the respective dispute letters, as required by and in violation of 15 U.S.C. §
12 1681i(a).
13

14 44. Defendants, upon receipt of Plaintiff's dispute, failed to conduct
15 investigations with respect to the disputed information as required by 15
16 U.S.C. §§ 1681s-2(b)(1)(B) (as to PHH) and/or 1681i(a) (as to Equifax and
17 Lexis).
18

19 45. Due to Defendants' failure to reasonably investigate Plaintiff's disputes, they
20 each further failed to correct and update Plaintiff's information as required by
21 15 U.S.C. § 1681s-2(b)(1)(E) (as to PHH), thereby causing continued
22 reporting of inaccurate information in violation of 15 U.S.C. §§ 1681-
23 s(2)(b)(1)(C) (as to PHH) and/or 1681e(b) (as to Equifax and Lexis).
24
25
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1 46. Equifax's and Lexis's reporting and re-reporting the above-referenced
2 inaccurate and misleading information also constituted a violation of 15
3 U.S.C. § 1681g(a) because the lack of clarity in the information reported and
4 re-reported has the tendency to confuse ordinary consumers, like Plaintiff.
5

6 47. Despite Plaintiff's efforts to correct Defendants' erroneous and misleading
7 reporting in writing, Defendants neglected, refused, or failed to do so.
8

9 48. Defendants' continued inaccurate and misleading reporting in light of their
10 knowledge of the actual errors was willful. Plaintiff is, accordingly, eligible
11 for statutory damages from each and every Defendant.
12

13 49. Also as a result of Defendants' continued inaccurate and negative reporting,
14 Plaintiff has suffered actual damages, including without limitation significant
15 damage to his credit score and creditworthiness, fear of credit denials, loss of
16 reputation, out-of-pocket expenses in challenging each Defendants' wrongful
17 representations, and emotional distress.
18

19 50. The foregoing acts and omissions constitute numerous and multiple willful,
20 reckless or negligent violations of the FCRA, including but not limited to each
21 and every one of the above-cited provisions of the FCRA, 15 U.S.C. § 1681.
22

23 51. As a result of each and every willful violation of the FCRA, Plaintiff is
24 entitled to actual damages as the Court may allow pursuant to 15 U.S.C. §
25 1681n(a)(1); statutory damages pursuant to 15 U.S.C. § 1681n(a)(1); punitive
26
27

1 damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(2); and
2 reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1681n(a)(3) from
3 Defendants.
4

5 52. As a result of each and every negligent noncompliance of the FCRA, Plaintiff
6 is entitled to actual damages as the Court may allow pursuant to 15 U.S.C. §
7 1681o(a)(1); and reasonable attorney's fees and costs pursuant to 15 U.S.C. §
8 1681o(a)(2) from Defendants.
9

10 **PRAYER FOR RELIEF**

11 Plaintiff respectfully requests the Court grant Plaintiff the following relief
12 against Defendants:
13

14 **FIRST CAUSE OF ACTION**
15 **VIOLATION OF THE FAIR CREDIT REPORTING ACT**
16 **15 U.S.C. § 1681 ET SEQ. (FCRA)**

- 17 • actual damages pursuant to 15 U.S.C. § 1681n(a)(1);
- 18 • statutory damages pursuant to 15 U.S.C. § 1681n(a)(1);
- 19 • punitive damages as the Court may allow pursuant to 15 U.S.C. §
20 1681n(a)(2);
- 21 • costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. §
22 1681n(a)(3), and 15 U.S.C. § 1681(o)(a)(1) against Defendants for each
23 incident of negligent noncompliance of the FCRA; and
24
- 25 • any other relief the Court may deem just and proper.
26
27

TRIAL BY JURY

53. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: January 7, 2020

Respectfully submitted,

By /s/ David H. Krieger, Esq.

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